

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
<b>Noah Coppess</b> Cedar County	NO. 2013-AQ-02 NO. 2013-SW- 02

TO: Noah Coppess  
1003 Highway 30  
Stanwood, IA 52337

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Noah Coppess for the purpose of resolving asbestos National Emission Standards for Hazardous Air Pollutant (NESHAP) violations, illegal open dumping violations, and illegal open burning violations in connection with the demolition and burning of the old Tri-State Mill & Elevator located at 315 1<sup>st</sup> Avenue in Stanwood, Cedar County, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**  
Jon Ryk, Environmental Specialist  
Iowa Department of Natural Resources  
Field Office No. 6  
1023 West Madison Street  
Washington, IA 52353-1623  
Phone: 319/653-2135

**Relating to legal requirements:**  
Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-6243

**Payment of penalty to:**  
Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the

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Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Noah Coppess is the deed holder to property located in Cedar County at 315 1<sup>st</sup> Avenue, Stanwood, Iowa.

2. On September 17, 2011, Mr. Paul Brandt of Field Office No. 6 received an anonymous complaint that a wood building had been knocked down and was being burned on the above-described property.

3. On September 23, 2011, DNR Field Office No. 6 Environmental Specialist Jon Ryk investigated the complaint and found a demolished and burned structure including scrap metal, unburned wood, shingles, and remaining ash. Mr. Ryk took pictures of the site, documenting that the building had been demolished and partially burned. The demolished structure was identified as the old Tri-State Mill & Elevator.

4. On September 23, 2011, Mr. Ryk called and met with Mr. Coppess and informed Mr. Coppess of the DNR's open burning rules, and that the burned materials fell into the trade waste category, which is not exempted from the regulations. During that interview, Mr. Coppess admitted to burning down the structures on the property.

5. Mr. Ryk later determined from DNR records that no asbestos removal contractor was on site during the demolition, asbestos NESHAP removal requirements were not followed, and DNR was not notified of the removal of demolition debris or the burning of the demolition debris.

6. On September 28, 2011 a Notice of Violation letter (NOV) was sent to Noah Coppess, citing Mr. Coppess for the asbestos NESHAP violations that occurred in connection with the demolition of the old Tri-State Mill & Elevator, as well as the improper burning of trade waste and improper waste disposal. The NOV required Mr. Coppess to cease all future illegal open burning, to test the remaining shingles to determine if they are an asbestos containing material (ACM), and to properly dispose of any remaining construction waste, demolition waste, and ACM appropriately. In addition, the NOV required the submission of documentation of proper disposal for these items.

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7. On March 5, 2012 Noah Coppess provided Jon Ryk with an asbestos testing result, showing that the remaining shingles did not contain asbestos. Mr. Coppess has cooperated throughout the process with remediation requests.

8. Noah Coppess has a previous history of violation of DNR rules. An April 5, 2011, NOV was issued to Noah Coppess for improper waste disposal of a residence that he demolished, and Mr. Coppess was informed that he could not burn the debris as a manner of disposal. Mr. Coppess complied with the directions set forth in the NOV for this incident.

9. Mr. Coppess alleges that the structure was a dilapidated 30x31 wood structure and that the City of Stanwood supported his destruction of what was considered an eye sore.

10. Mr. Coppess further alleges that no neighbor reported any complaints about the demolition or burning of the structure on the premises.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trade waste is specifically prohibited. The open burning of solid waste by Noah Coppess demonstrates violations of this provision.

3. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal NESHAP, found at 40 CFR Part 61, subpart M.

4. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that an asbestos inspection was ever completed prior to the demolition and burning of the building.

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5. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. DNR has no record of receiving the required notification for the demolition of the building.

6. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

7. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The illegal open dumping of solid waste by Noah Coppess demonstrates non-compliance with this provision.

**V. ORDER**

THEREFORE, DNR orders and Noah Coppess agrees to the following:

1. Noah Coppess shall pay a penalty of \$7,500 within 30 days of the date this order is signed by the Director;

2. Noah Coppess shall comply in the future with the regulations concerning disposal of solid waste, open burning, and asbestos NESHAP compliance; and

3. Noah Coppess shall remove all remaining solid waste from the old Tri-State Mill & Elevator located at 315 1<sup>st</sup> Avenue in Stanwood and shall dispose of it at a permitted sanitary disposal project, and shall submit landfill receipts and documentation of proper disposal for any recycled items to DNR Field Office 6 by no later than 45 days from the date this order is signed by the Director.

**VI. PENALTY**

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$9,000.00 is assessed by this administrative consent order. The penalty must be paid within 30 days of the date this order is signed by the Director.

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code

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section 455B. 146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Noah Coppess achieved an economic benefit by failing to comply with the laws regarding open dumping and open burning. Noah Coppess avoided having to pay the tipping fees at a landfill, especially for the solid waste that was illegally burned on-site. Based on the presence of burn areas on the property, it is evident that a significant amount of waste was disposed of by open burning. Mr. Coppess also avoided having to hire a licensed asbestos contractor to properly inspect the structure for asbestos. Therefore, a penalty of \$2,750.00 is assessed for this factor.

Gravity of the Violation – The open burning of construction and demolition waste can release toxins that pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Proper asbestos inspection was not undertaken, and some shingles were not removed prior to setting fire to the demolished structure as required by the asbestos NESHAP. Additionally adjacent property owners may have been exposed to asbestos and were exposed to the harmful smoke given off from the burning of such a structure. For these reasons, \$3,000.00 is assessed for gravity.

Culpability – Noah Coppess owns and controls the property on which the burning took place. He has intentionally allowed the open burning of prohibited wastes. Mr. Coppess has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to the DNR's rules. Mr. Coppess is a member of the Stanwood Fire Department, which has received written notification of the laws of Iowa as they pertain to open burning and asbestos notification. Additionally, as a member of the Fire Department, Mr. Coppess should be aware of the hazard that smoke from burning structures poses to human health. Further, Mr. Coppess was given a Notice of Violation in April 2010 for the improper disposal of a residential structure that he demolished in Clarence, Iowa. At that time he was instructed that he could not burn the material as a means of disposal. This is then the second violation for Mr. Coppess for illegal disposal of solid waste. For these reasons, \$1,750.00 is assessed for culpability.

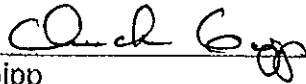
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VII. WAIVER OF APPEAL RIGHTS

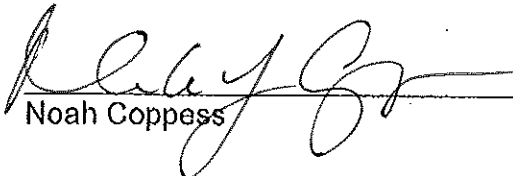
This administrative consent order is entered into knowingly and with the consent of Noah Coppess. For that reason, Mr. Coppess waives his rights to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

  
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Chuck Gipp  
Iowa Department of Natural Resources

Dated this 23<sup>rd</sup> day of  
January, 2013.

  
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Noah Coppess

Dated this 28 day of  
December, 2012.

DNR Field Office 6; Anne Prezlosi; VII.C.2